

**Indian Institute Of Banking And ...  
vs Mukul Srivastava  
on 27 July, 2010**

**The Right To Information Act, 2005  
Section 2(h) in The Right To Information Act, 2005  
The Companies Act, 1956**

**Delhi High Court**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P. (C) 1856/2010 & CMs 3713, 5390, 5682/2010  
Reserved on: July 16, 2010**

**Decision on : July 27, 2010**

**INDIAN INSTITUTE OF BANKING AND  
FINANCE ..... Petitioner Through: Mr. N.K. Kaul,  
Senior Advocate with Mr. Sanjay Bhatt and**

**Mr. Kishan Rawat, Advocates.**

**versus**

**MUKUL SRIVASTAVA ..... Respondent Through: Mr.  
Tej Bahadur Verma, Advocate.**

**CORAM: JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes JUDGMENT

27.07.2010

1. The short question is whether the Indian Institute of Banking & Finance, the Petitioner herein, is a `public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (RTI Act).

2. The facts in brief are that the Respondent Mukul Srivastava, an employee of the Punjab National Bank, enrolled with the Petitioner Institute and appeared for the Junior Associate of the Indian Institute of Bankers (JAIIB) examination conducted by it under the old syllabus in December 2003. Although, he passed in the "Single Basic Accountancy" paper in 2004, he could not clear the remaining subjects under the old syllabus till December 2005. Even under the revised syllabus he could not complete the examination by December 2007. He enrolled afresh for the first block of two attempts for JAIIB examination in May 2008. He remained absent in all three examinations in May and December 2008. The Respondent took the on-line examination for the paper on "Legal Aspects of Banking" on 2nd December 2007. By a letter of that date, he requested the Petitioner for 5 grace marks. The Petitioner replied on 29th December 2007 stating that the said request could not be acceded to. He then approached the Minister of State for Finance, Government of India with a similar request. This letter was forwarded to the Petitioner. It was replied to on 28th February 2008 reiterating that as per the rules of the examination, candidates were not entitled to any grace marks.

This was followed by a legal notice and a consumer complaint filed by the Respondent with the District Consumer Forum, New Delhi.

3. In the above background, the Respondent sent a letter dated 24 th February 2009 to the Petitioner under the RTI Act seeking information about all the examinees who had appeared for the JAIIB examination on 18th November 2007 and their respective answer sheets. In reply to the above letter, the Petitioner informed the Respondent that the Petitioner was not a public authority under the RTI Act. Thereafter the Respondent approached the Central Information Commission (CIC).

4. By the impugned order dated 9th February 2010, the CIC held that the Petitioner was a public authority and directed it to appoint a Central Public Information Officer (CPIO) within 30 days and provide the information sought for, to the Respondent within the same period.

5. The summary of the order of the CIC is as under: (i) The policy making and the executive bodies of the Petitioner Institute "are substantially manned by the senior executives of the Public Sector Banks and the bulk of its finances also come directly or indirectly from those banks."

(ii) The services of the Petitioner "are largely subscribed to and enjoyed by the Public Sector Banks and their employees." (iii) There was "a very close relationship between the Public Sector Banks" and the Petitioner "almost verging on mutual dependence".

(iv) The Petitioner, "a Non-Governmental Organisation, being substantially financed by the Public Sector Banks directly and indirectly is nothing but a public authority".

6. Apart from the above, the CIC observed that the holding of examinations and setting standards for the banking sector was a public service, even if the participants had to pay a fee for taking such an examination. According to the CIC, in this respect, the Petitioner was no different from the Central Board of Secondary Education, the Institute of Chartered Accountants of India, the Institute of Cost and Works Accountants of India, etc. Consequently, it was held that apart from fulfilling the condition of "substantial financing as stipulated in Section 2(h)(d)(ii)", the Petitioner "also performs public service covering a vast section of population". Consequently, it was concluded that the Petitioner is a public authority under Section 2(h) of the RTI Act.

7. While directing notice to be issued to the Respondent on 18th March 2010, this Court stayed the impugned order. The Respondent appeared through counsel and filed an application being CM No. 5390 of 2010 for directions. Learned counsel for the Respondent submitted that the same should be treated as the Respondents reply. With the consent of both the parties, the petition was taken up for final hearing.

8. This Court has heard the submissions of Mr. N.K. Kaul, learned Senior counsel appearing for the Petitioner and Mr. Tej Bahadur Verma, learned counsel appearing for the Respondent.

9. There appears to be no dispute on the fact that the Petitioner Institute is a non-governmental organization. Therefore, in order to ascertain if it is a public authority, it is Section 2(h)(d)(ii) of the RTI Act that requires to be referred to. The said provision reads as under:- "2(h) "public authority" means any authority or body or institution of self-government established or constituted,

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(a)

(b)

(c)

(d) by notification issued or order made by the appropriate Government, and includes any

(i)

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

10. The question for determination, as correctly formulated by the CIC, is whether the Petitioner is "substantially financed directly or indirectly by funds provided by the appropriate Government?"

11. The Petitioner was first incorporated as the Indian Institute of Bankers under the Indian Companies Act, 1913 on 4th April 1928 and its initial

subscribers included the Bank of India and the Imperial Bank of India. The present Governing Council of the Petitioner consists of a President, two Vice Presidents and 18 Members, majority of whom are from public sector banks. One of the main activities of the Petitioner is to conduct examinations for banking personnel. Passing in these examinations is a pre-condition for career promotion in public sector banks. Therefore, a majority of the candidates who appear in these examinations are from public sector banks. The member banks and financial institutions give an annual subscription to the Petitioner Institute and those appearing in the examination pay a fees to the Petitioner for the service that it provides.

12. What appears to have weighed with the CIC is that the subscription received by the Petitioner from its member banks and the fees collected by it from the candidates appearing in the examinations conducted by it tantamounts to "substantial financing directly or indirectly by the appropriate Government". S.2(h)(d)(ii) of the RTI Act as it reads is unambiguous. The substantial financing of the Petitioner directly or indirectly has to be by "the appropriate Government" and not by any other public authority.

13. It is possible that the member banks, for instance, the State Bank of India (SBI), is itself a public authority. However, ` substantial financing by the SBI would itself not make the Petitioner a ` public authority. It would have to be shown that the appropriate Government itself directly or indirectly finances or has financed the Petitioner.

14. It is nobodys case, and certainly not that of the Respondent, that there is any substantial financing directly or indirectly of the Petitioner by the appropriate Government. Counsel for the Respondent repeatedly referred to the total amount of subscription fee received from the members of the Petitioner Institute and submitted that this amount was substantial enough for the Court to come to the conclusion that the Petitioner is a public authority. This submission, in the considered view of this Court, is misconceived. The mere subscription received by the Petitioner from its members, some of whom may be public authorities within the meaning of Section 2(h) of the RTI Act and the fees collected by it from the candidates who take the examinations conducted by it, cannot as such constitute "substantial financing" by the "appropriate government". That is the mandate of the statue. If the arguments of the Respondent were to be accepted then Section 2(h)(d)(ii) should permit substantial financing directly or indirectly through funds provided by "a public authority". However, as the statue reads, such

substantial financing has to be by "the appropriate Government". It is not possible to read into Section 2(h)(d)(ii) of the RTI Act words that do not exist.

15. For the aforementioned reasons, this Court is not able to concur with the impugned order of the CIC dated 9th February 2010 which is hereby set aside. The writ petition is allowed, but in the circumstance, with no order as to costs.

16. Writ petition and the pending applications are accordingly disposed of.

S. MURALIDHAR, J

JULY 27, 2010

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